

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

YVETTE WEINSTEIN, CHAPTER 7  
TRUSTEE OF THE GEORGE S.  
AQUINO BANKRUPTCY ESTATE,

Plaintiff,

v.

DIRECT ACCESS, LLC, *et al.*,

Defendants.

Case No. 2:10-CV-00822-KJD-LRL

**ORDER**

Presently before the Court is Plaintiff's Motion to Remand (#14). Defendants Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP ("Defendants") filed a response in opposition (#17) to which Plaintiff replied (#23).

**I. Background and Procedural History**

Plaintiff filed her complaint on February 25, 2010 in Nevada state court. She asserted claims for breach of contract, breach of the covenant of good faith and fair dealing, violations of Nevada statute, fraud, misrepresentation, conversion and civil conspiracy. Defendants were served on May 11, 2010. Defendants filed a timely notice of and petition for removal on June 1, 2010. Defendants based jurisdiction upon federal questions they assert that Plaintiff had raised in her complaint under the Truth in Lending Act ("TILA), the Real Estate Settlement Procedures Act ("RESPA"), and the

1 Fair Credit Reporting Act (“FCRA”). Now Plaintiff has timely filed her motion to remand asserting  
2 that her well plead complaint only raises state law claims and does not raise substantial issues of  
3 federal law.

## 4 II. Motion to Remand

5 Federal courts have removal jurisdiction only if there is original jurisdiction over a suit. See  
6 28 U.S.C. §1441(a); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987) (“Only state-court  
7 actions that originally could have been filed in federal court may be removed to federal court by the  
8 defendant”). Furthermore, there is a strong presumption against removal jurisdiction which means  
9 that the defendant always has the burden of establishing that removal is proper. Gaus v. Miles, Inc.,  
10 980 F.2d 564, 566 (9th Cir. 1992). In effect, a party seeking removal must show that plaintiff has  
11 either alleged a federal claim, a state claim that requires a resolution of a substantial issue of federal  
12 law, or a state claim completely pre-empted by federal statute. See American Well Works Co. v.  
13 Layne & Bowler Co., 241 U.S. 257, 260 (1916); Franchise Tax Bd. v. Construction Laborers  
14 Vacation Trust, 463 U.S. 1, 9 (1983); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 65 (1987).

15 The presence of federal-question jurisdiction is governed by the “well-pleaded complaint  
16 rule” which provides that federal jurisdiction exists only when a federal question is presented on the  
17 face of the plaintiff’s properly pleaded complaint. Caterpillar, 482 U.S. at 392. The plaintiff may  
18 avoid federal jurisdiction by exclusive reliance on state law. Id. Defendants essentially argue that  
19 Plaintiff omitted necessary federal claims to avoid jurisdiction.

20 However, though Plaintiff asserts that defendants misrepresented information in federally  
21 required forms under TILA and RESPA, the claims arise under state law. Plaintiff is not asserting  
22 that violations of TILA, RESPA, and the FCRA gave rise to the state law claims. Plaintiff merely  
23 asserts that information that was provided as a requirement by those laws were misrepresentations.  
24 Even if Plaintiff had claims under those federal statutes, Plaintiff has failed or chosen not to raise  
25 them here. Defendants have failed to meet their burden in establishing that Plaintiff has alleged  
26

1 federal claims or state law claims that require resolution of substantial issues of federal law. Thus,  
2 the Court grants the motion to remand.

3 III. Conclusion

4 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (#14) is  
5 **GRANTED.**

6 DATED this 7<sup>th</sup> day of October 2010.

7  
8 

9  
10 Kent J. Dawson  
United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26